nation provision in the service agreement which would effect a termination of service to Fort Pierce was inconsistent with the public interest. The Commission made it clear that before F.P. & L. could terminate service to Fort Pierce it had to file pursuant to section 35.15 of the Commission's regulations, a notice to terminate; on April 28, 1978, F.P. & L. so filed. Commission review of F.P. & L.'s notice of cancellation filed herein indicates that the proposed termination has not been shown to be consistent with the public interest and may be unlawful. Consequently, the Commission will suspend F.P. & L.'s notice of cancellation for 5 months and order an expedited hearing to determine if the proposed cancellation of service to Fort Pierce is in the public interest.

The Commission finds: (1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Federal Power Act that the Commission enter upon a hearing concerning the lawfullness of F.P. & L.'s notice of cancellation to Fort Pierce filed on April 28, 1978, and suspend the proposed notice for 5 months.

(2) Partícipation by Fort Pierce in this proceeding may be in the public interest.

The Commission orders: (A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the DOE Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's rules of practice and procedure and the regulations under the Federal Power Act, a hearing shall be held to determine whether F.P. & L.'s proposed cancellation of service to Fort Pierce is consistent with the public interest.

(B) F.P. & L.'s notice of cancellation of service to Fort Pierce is hereby suspended for 5 months.

(C) A presiding administrative law judge to be designated by the chief administrative law judge for that purpose, shall convene a prehearing conference within 20 days of the issuance of this order to establish an expedited procedural schedule that will insure prompt resolution of the issues in this proceeding.

(D) Fort Pierce is hereby permitted to intervene in this proceeding subject to the rules and regulations of the Commission: *Provided, however,* That participation of Fort Pierce shall be limited to the matters specifically set forth in its petition to intervene; and *Provided, further,* That the admission of Fort Pierce shall not be construed as recognition by the Commission that it might be aggrieved by any orders entered in this proceeding.

(E) The Secretary shall cause prompt publication of this order.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc. 78-16420 Filed 6-13-78; 8:45 am]

[6740-02]

EL PASO NATURAL GAS CO.

[Docket No. RP78-18]

Order Granting Motion To Make Effective Revised Tariff Sheets After Suspension, Motion To Withdraw Tariff Sheets, and Waiver of the Regulations, and Denying Motion To Reject Revised Tariff Sheets

ISSUED MAY 31, 1978.

By order issued December 30, 1977, the Commission accepted for filing and suspended for five months, until June 1, 1978, tariff sheets reflecting a proposed rate increase of $112 million. Acceptance was subject to a condition that El Paso Natural Gas Co. (El Paso) file revised tariff sheets on or before June 1, 1978, adjusting the rate increase to eliminate costs attributable to facilities not in service on June 1, 1978. Also, the Commission rejected alternative tariff sheets reflecting El Paso's estimate of the maximum cost impact of enactment of the Pearson-Benson deregulation proposal, $122 million annually, and El Paso's proposal that it be permitted to track in its rates changes in royalty payments and production taxes.

On May 1, 1978, El Paso filed a motion to place in effect on June 1, 1978, the suspended tariff sheets, as revised to include in the proposed base rates a rate increase under the purchase gas adjustment (PGA) provision in El Paso's tariff that was accepted by the Commission and permitted to become effective on April 2, 1978, and a Gas Research Institute (GRI) surcharge of 0.12 cents per Mcf for research, development and demonstration (R.D. & D.) pursuant to Opinion No. 11, issued March 22, 1978, in Docket No. RM77-14. These tariff sheets are shown in Appendix A to this order. El Paso also tendered alternate tariff sheets, shown in Appendix B, reflecting its estimate of additional costs, $61.6 million annually that would result from enactment of a compromise deregulation proposal; and El Paso again requested that it be permitted to track changes in royalty payments and production taxes. Finally, El Paso stated that all facilities for which costs were reflected in its original filing has been placed in service and therefor that further revision of the proposed rates was not necessary.

Notice of this filing was issued on May 9, 1978, providing for protests or petitions to intervene to be filed on or before May 19, 1978. Arizona Electric Power Cooperative, Inc. (AEPCO) and the City of Willcox, Ariz. filed, on May 11, 1978, a joint motion to reject El Paso's motion and the revised tariff sheets. On May 19, 1978, El Paso filed a response to AEPCO's motion and a notice of partial withdrawal. El Paso moved to withdraw those tariff sheets reflecting deregulation cost increases and its tracking proposal. On May 19, 1978, AEPCO filed a pleading raising substantially the same issues it raised in its May 11, 1978, pleading and which also requested that the Commission suspend El Paso's revised tariff sheets if AEPCO's motion to reject is denied. [On May 26, 1978, El Paso filed an answer to AEPCO's May 19, 1978 pleading and on May 30, 1978, AEPCO filed a reply thereto. These two pleadings raise no arguments that have not already been made in this proceeding.]

El Paso will be permitted to make effective subject to refund on June 1, 1978, the rate increase originally accepted and suspended, and to revise the tariff sheets reflecting that increase to include the PGA increase already accepted and suspended for one day by the Commission during the suspension period and the GRI surcharge, upon condition that collection of the surcharge shall be subject to compliance with the requirements stated in any further orders on El Paso's GRI surcharge in Docket No. RM77-14.

Our review of AEPCO's motion to reject and its request for suspension indicates that they should be denied. The major issues raised by AEPCO have been mooted by El Paso's motion for partial withdrawal. To the extent not covered by the partial withdrawal or otherwise dealt with by this order, we find that the arguments raised in AEPCO's pleadings do not represent good cause for rejection or further suspension of El Paso's filing, as revised. AEPCO is of course free to raise any issues not resolved by this order and by El Paso's partial withdrawal in the evidentiary proceedings in this docket.

Pursuant to section 154.66 of the Regulations, the Commission shall grant special permission El Paso to modify the proposed rates under suspension as it now proposes. The PGA rate increase to be included in the base rates to be effective on June 1, 1978 has already been reviewed by the Commission and permitted to become effective subject to refund on April 2, 1978, by order issued March 31, 1978 in Docket Nos. RP77-18 and RP72-155 (PGA78-1 and AP78-1). Inclusion of this PGA increase within the base rates proposed in this docket will not affect the collection of these charges subject to refund; and this adjustment has been permitted routinely by the Commission. It is also appropriate to allow El Paso to include its GRI surcharge of 0.12 cents per Mcf in the

proposed rates. This amount will be collected subject to an explicit condition that El Paso comply with the terms of any further order on this matter following a review of the claimed costs of R.D. & D. funding to GRI in Docket No. RM77-14.

Finally, AEPCO suggests that El Paso is attempting to retroactively amend the proposed rates to reflect additional costs attributable to facilities that were not in service when El Paso's original rate tender was made. In the order of December 30, 1977, the Commission granted waiver of section 154.63(e)(2)(ii) and permitted El Paso to include in its proposed rates the costs of certain facilities expected to be in service prior to June 1, 1978, the end of the five month suspension period, upon condition that on or before June 1, 1978, El Paso file revised tariff sheets eliminating the costs of any facilities not in service by June 1, 1978. Because all of the subject facilities have been placed in service, the filing of revised tariff sheets is not required. Further, review of El Paso's filings in this docket indicates that El Paso has not increased the originally proposed rates to include the cost of additional facilities.

The Commission finds: Good cause has been shown to grant special permission to El Paso to revise the tariff sheets accepted for filing in this docket on December 30, 1977, to include increased purchased gas costs and a GRI funding surcharge, to grant El Paso's motion to partially withdraw the tariff sheets tendered in this docket on May 1, 1978, and to permit El Paso to place into effect on June 1, 1978, the revised tariff sheets tendered on May 1, 1978, subject to refund and the condition hereafter ordered.

The Commission orders: (A) El Paso's motion to make effective is hereby granted; and appropriate waiver of the Commission's regulations shall be granted to permit El Paso to make effective on June 1, 1978, the tariff sheets shown in Appendix A to this order, subject to refund and the condition that El Paso shall comply with the terms of any further order of the Commission on its GRI funding surcharge in Docket No. RM77-14.

(B) El Paso's motion to partially withdraw filed on May 19, 1978 in this docket is hereby granted.

(C) AEPCO's motion to reject, filed on May 11, 1978, and its request for suspension of the filing in its May 19, 1978, pleading in this docket is hereby denied.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

APPENDIX A

EL PASO NATURAL GAS CO.

The following sheets are included in the instant tender under the tab designated "Revised Tariff Sheets" and "Alternative Tariff Sheets" and are described by category.

REVISED TARIFF SHEETS

Category I. The following tariff sheets reflect the suspended rates at Docket No. RP77-18, modified to include: (1) the increase in rates authorized in El Paso's PGAC notice of change in rates which became effective on April 2, 1978, and (ii) the GRI R.D. & D. Funding Unit of 0.12 cents per Mcf proposed and expected to become effective on June 1, 1978:

Tariff Volume No. and Sheet Designation

Original volume No. 1, substitute twenty-second revised sheet No. 3-B.
Third revised volume No. 2, substitute twelfth revised sheet No. 1-D.
Original volume No. 2A, substitute fourteenth revised sheet No. 1-C.

Category II. The following tariff sheets contain the surcharge rate applicable to the Rhodes Reservoir Storage operations and reflect the 0.50 cents per Mcf increase in the surcharge rate making the total surcharge rate 1.65 cents per Mcf. Such sheets are identical to their counterpart sheets suspended at Docket No. RP77-18, except the effective date of June 1, 1977, has been inserted thereon.

Tariff Volume No. and Sheet Designation

Original volume No. 1, sixth revised sheet No. 63-C.6.
Third revised volume No. 2, sixth revised sheet No. 1-M.6.
Original volume No. 2A, sixth revised sheet No. 7-MM.6.

Category III. The following tariff sheet contains the rates suspended at Docket No. RP78-18 under special rate schedules modified to include the GRI R.D. & D. Funding Unit of 0.12 cent per Mcf proposed and expected to become effective on June 1, 1978:

Tariff Volume No. and Sheet Designation

Third revised volume No. 2, substitute fifth revised sheet No. 1-D.2.

APPENDIX B

EL PASO NATURAL GAS CO., ALTERNATIVE TARIFF SHEETS

The following tariff sheets contain the suspended rates at Docket No. RP78-18, adjusted as described in Category I above and further modified to incorporate proposed rate adjustments resulting from pending Federal legislation on deregulation of natural gas on or before June 1, 1978.

Tariff Volume No. and Sheet Designation

Original volume No. 1, substitute twenty-second revised sheet No. 3-B.
Third revised volume No. 2, substitute twelfth revised sheet No. 1-D.
Original volume No. 2A, substitute fourteenth revised sheet No. 1-C.

[FR Doc. 78-16421 Filed 6-13-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 897-3]

CALIFORNIA STATE MOTOR VEHICLE POLLUTION CONTROL STANDARDS

Waiver of Federal Preemption

I. INTRODUCTION

By this decision, issued under section 209(b) of the Clean Air Act, as amended (hereinafter the "Act"),[1] I am granting the State of California a waiver of Federal preemption to enforce the California exhaust emission standards applicable to 1979 and subsequent model year passenger cars. Under section 209(b) of the Act, the Administrator is required to grant the State of California a waiver of Federal preemption, after opportunity for a public hearing, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards.[2] A waiver cannot be granted if I find that the determination of the State of California is arbitrary and capricious, that the State does not need such State standards to meet compelling and extraordinary conditions, or that such State standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. State standards and enforcement procedures are deemed not to be consistent with section 202(a) if there is inadequate lead time to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within that time frame, or if the Federal and California certification and test procedures are inconsistent. For the reasons given below, I have concluded that I cannot make the findings required for the denial of the waiver under section

[1] 42 U.S.C. § 7543(b)(1), as amended by Pub. L. No. 95-95, 91 Stat. 755 (1977).

[2] Public hearings were held on May 16-19 and August 4, 1977, pursuant to notices published by the Environmental Protection Agency (EPA) in the FEDERAL REGISTER, *see* 42 Fed. Reg. 19372 (April 13, 1977); 42 Fed. Reg. 36009 (July 13, 1977), to consider the questions that pertain to today's decision. On September 30, the California Air Resources Board (CARB) found that the standards under consideration in today's decision were, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards. *See* State of California, Air Resources Board, *Resolution 77-48*, September 30, 1977. This determination, as well as changes to the 1981 and subsequent model year California standards, was considered at a public hearing held on October 13, 1977, pursuant to notice published by EPA in the FEDERAL REGISTER. *See* 42 Fed. Reg. 45942 (September 13, 1977).

209(b) of the Act in the case of these California standards.

In light of the fact that the California Air Resources Board (CARB) has recently taken many actions in this area of emissions regulation, I believe that it is necessary to clarify at the outset the scope of my decision today. This decision is concerned with the 1979 and subsequent model year California passenger car standards, certification procedures and high altitude regulations considered at the May 16–19, August 3–4 and October 13, 1977, Environmental Protection Agency (EPA) public hearings,[3] including certain administrative changes which have been made to these regulations at various times.[4] This decision further considers the waiver request for California's compliance testing and inspection program with respect to 1979 model year gasoline-powered passenger cars and 1980 and subsequent model year gasoline and diesel-powered passenger cars, conducted under sections 2100 et seq. of title 13 of the California Administrative Code, and "California New Motor Vehicle Compliance Test Procedures," adopted on June 24, 1976, last amended June 30, 1977.[5] However, this waiver decision does not include the waiver requests concerning limitations on allowable maintenance during the certification of 1980 and subsequent model year passenger cars adopted by the CARB on May 26, 1977, or certification requirements covering the carburetor idle air/fuel mixture adjustment mechanism. These waiver requests will be the subject of a waiver decision to be published in the FEDERAL REGISTER in the near future.

[3]The California high altitude certification regulations adopted on November 23, 1976, as amended June 8, 1977, have been the subject of a previous waiver decision. *See* 43 Fed. Reg. 1829, 1832 (January 12, 1978). I believe that the findings previously made in that decision with regard to these regulations are also applicable to today's decision. *See id.*

[4]By letter dated June 9, 1977, the CARB informed the EPA that it had adopted revisions of an administrative nature to its regulations covering 1978 and 1979 standards and certification procedures. In addition, by letter dated July 6, 1977, the CARB informed the EPA that it had taken a minor administrative action to correct the model year referenced under a section of the California Administrative Code considered in this decision. I have determined that those actions taken with respect to the 1978 standards and test procedures fall within the scope of a waiver currently in effect, and therefore, do not require a new waiver. *See* 42 Fed. Reg. 1503, 1504 (January 7, 1977).

[5]The California compliance testing and inspection program, as applicable to light-duty trucks, medium-duty vehicles and heavy-duty vehicles and engines, has been the subject of a previous waiver decision. *See* 43 Fed. Reg. 9344 (March 7, 1978). I believe that the findings previously made in that decision with regard to this program are also applicable to today's decision. *See id.*

II. DISCUSSION

Public and Health and Welfare. Under one of the criteria of section 209(b) of the Act, I cannot grant a waiver if I find that California's determination that its "standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards" is arbitrary and capricious. On September 30, 1977, the CARB determined[6] that the standards under consideration in this decision were, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards.[7] With regard to the 1979 and primary set of 1981 California standards, it is clear that these standards (except for the 1981 oxides of nitrogen [NO_x] standard under the optional 100,000 mile certification procedure) are at least as stringent as the applicable Federal standards[8] and are therefore deemed under the Act to be at least as protective of public health and welfare as the comparable Federal standards.[9] Thus, I cannot find that California's determination concerning these standards is arbitrary and capricious.

As to the 1980, optional 1981, and 1982 and subsequent model year California standards, the California determination was based on the conclusion that given the Federal standards man-

[6]*See* State of California, Air Resources Board, *Resolution 77-48*, September 30, 1977.

[7]The California exhaust emission standards under consideration in this decision are as follows (expressed in grams per vehicle mile):

Model year	Hydrocarbons (HC)*	Carbon monoxide (CO)	Oxides of nitrogen (NO_x)**
1979	0.41	9.0	1.5
1980	0.39 (0.41)	9.0	1.0 (1.5)
1981	(0.41)	3.4 or***	1.0 (1.5)
	0.39 (0.41)	7.0	0.7
1982	0.39 (0.41)	7.0 or***	0.4 (1.0)
	0.39 (0.41)	7.0	0.7
1983 and subsequent	0.39 (0.41)	7.0	0.4 (1.0)

*Beginning in 1980, the hydrocarbon standard is expressed as a non-methane hydrocarbon standard. Hydrocarbon standards in parentheses apply to total hydrocarbons, or, for 1980 models only, to emissions corrected by a methane content correction factor. The requirements for the demonstration of compliance with this standard are set forth in subparagraph 3(a) of the "California Exhaust Emission Standards and Test Procedures for 1980 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," as amended September 30, 1977.

**Oxides of nitrogen standards in parentheses are applicable to engine families which are certified under the optional 100,000 mile certification procedure set forth in paragraph 6 of the "California Exhaust Emission Standards and Test Procedures for 1980 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," as amended September 30, 1977.

***Throughout this decision, the first set of standards set forth above for the 1981 and 1982 model years shall be referred to as the "primary" set of standards for these model years. The second set of passenger car standards is optional. This set of standards shall hereinafter be referred to as the "optional" set of standards for either the 1981 and 1982 model years. A manufacturer must select either the primary or optional set of standards for his full gasoline-powered or diesel-powered product line for the entire two-year period. *See* Letter from Thomas C. Austin, CARB, to Benjamin R. Jackson, Director, Mobile Source Enforcement Division (MSED), EPA, November 1, 1977.

The applicable Federal exhaust emission standards are as follows (expressed in grams per vehicle mile):

Model year	HC	CO	NO_x
1979	1.5	15.0	2.0
1980	0.41	7.0	2.0
1981 and subsequent	0.41	*3.4	**1.0

*The Administrator may prescribe a CO standard not exceeding 7.0 grams per vehicle mile for the 1981 and 1982 model years if certain statutory criteria are met. *See* 42 U.S.C. § 7521(b), as amended by Pub. L. No. 95-95, 91 Stat. 751 (1977).

**For the 1981 and 1982 model years, certain manufacturers may be subject to a 2.0 grams per vehicle mile NO_x standard. *See* 42 U.S.C. § 7521(b), as amended by Pub. L. No. 95-95, 91 Stat. 751, 752 (1977). In addition, if certain statutory criteria are satisfied, the Administrator may waive this standard to not exceed 1.5 grams per vehicle mile for any class or category of passenger cars manufactured during any period of up to four model years beginning after the 1980 model year if a manufacturer demonstrates that such waiver is necessary to permit the use of an innovative power train technology, or innovative emission control device or system in such class or category of passenger cars, or for the four model year period beginning with the 1981 model year, if a manufacturer can show that such waiver is necessary to permit the use of diesel engine technology in such class or category of passenger cars. *See id.*

Ford contended that it was improper for me to assume the level of applicable Federal standards for the purposes of reviewing California's determination in the absence of the promulgation of such Federal standards. *See* Memorandum from John P. Eppel and Helen O. Petrauskas, Ford Motor Company, to B. R. Jackson, Director, MSED, EPA, December 2, 1977. I cannot agree. Since the Clean Air Act Amendments of 1977 provide that regulations applicable to emissions from 1979 and subsequent model year passenger cars must contain specific emission standards, I believe that I may consider the Federal standards required under these Amendments for the purposes of reviewing California's determination in this matter.

[8]*See* Memorandum from Eric O. Stork, former Deputy Assistant Administrator for Mobile Source Air Pollution Control, EPA, to Norman D. Shutler, Deputy Assistant Administrator for Mobile Source and Noise Enforcement, EPA, January 13, 1978; Memorandum from Eric O. Stork, former Deputy Assistant Administrator for Mobile Source Air Pollution Control, EPA, to Norman D. Shutler, Deputy Assistant Administrator for Mobile Source and Noise Enforcement, EPA, April 4, 1978.

[9]41 U.S.C. § 7543(b)(2), as added by Pub. L. No. 95-95, 91 Stat. 755 (1977).

dated under the Clean Air Act Amendments of 1977, additional control of NOx emissions from motor vehicles was necessary to protect the public health in California and to attain the California ambient air quality nitrogen dioxide (NO_2) standard and the Federal ambient air quality oxidant standard. This determination was also based on the fact that the adoption of a carbon monoxide (CO) emission standard less stringent than the Federal standard would still be adequate to meet the Federal and California CO ambient air quality standard by 1985 or 1990.[10] Based on its belief that emissions of NO_x pose a more significant threat to public health in California than emissions of CO, the CARB stated that it was reasonable to permit California to adopt and enforce its CO standard if it was necessary to ensure that the required reduction in NO_x emissions could be achieved.[11] In adopting the standard for hydrocarbon (HC) emissions, the CARB concluded that any increase in HC control associated with a 0.41 total HC standard compared with a 0.39 non-methane HC standard was a function of the technology used to meet the HC standard and that such increase in HC control was only marginal at best and not justified at the present time. Although its HC standard may provide less HC control than a 0.41 total HC standard, the CARB believed that it was reasonable to conclude that this slight difference in HC control was completely offset by the significant reduction in NO_x emissions provided under the California standards as compared to the Federal standards.[12]

The CARB indicated that it had considered all arguments raised against adopting such emission standards and that it had adopted these standards on account of the peculiar oxidant and NO_2 air quality problems in the California South Coast Air Basin.[13] This situation was clearly anticipated by Congress in enacting the Clean Air Act Amendments of 1977. The Administrator is precluded from substituting his judgment for that of California. Based on the public record, I cannot find that there is clear and compelling evidence that California acted unreasonably in making its determination.[14] As a result, I cannot find that California's determination with regard to these standards is arbitrary and capricious.

Lead Time and Technology. Under section 209(b), I also cannot grant a waiver if I find that California standards and accompanying enforcement procedures are not "consistent with section 202(a)." Section 202(a) states that standards promulgated under its authority "shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period." In order for California standards to be consistent with section 202(a), it is not required that the requisite technology be developed at present, but rather that the available lead time appear to be sufficient to permit the development and application of that technology.[15]

With respect to the 1979–1980 California standards, Ford Motor Co. testified that it would support the waiver request for these standards if the certification mileage accumulation fuel were not required to contain 0.125 gram per gallon of methylcyclopentadienyl manganese tricarbonyl (MMT).[16] No such requirement will exist for certification in California.[17] Even though General Motors Corporation was not confident it could sell vehicles meeting these standards due to the California assembly-line, compliance and inspection testing requirements, the manufactur-

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[10] *See* Transcript of Public Hearing on California Waiver Requests, San Francisco, California, October 13, 1977, at 26-27, 29, 30-35, 51-52, 168 (hereinafter "Tr. of October 1977 Hearing"); Transcript of Public Hearing on California Waiver Request (August 4, 1977), Volume II, at 262-264, 265, 268 (hereinafter "Tr. of August 1977 Hearing"); Letter from Thomas C. Austin, CARB, to Ben Jackson, Director, MSED, EPA, August 31, 1977, at Attachment V; State of California, Air Resources Board, "Control Strategies for Oxidant and Nitrogen Dioxide," January 25, 1977; State of California, Air Resources Board, *Staff Report No. 76-18-2*, September 21, 1976, at 1-2; State of California, Air Resources board, *Staff Report No. 76-22-2(a)*, November 23, 1976, at 2, 5, 28-30 (hereinafter "CARB November Staff Report"); State of California, Air Resources Board, *Staff Report No. 77-20-3*, September 12, 1977, at 22; State of California, Air Resources Board, *Supplement to Staff Report 77-20-3*, September 26, 1977, at 1-3 (hereinafter "Supplement to CARB September 1977 Staff Report"); Brief for California Air Resources Board at 5-6, 7-9, In the Matter of Application of California Air Resources Board for a Waiver From the Provisions of Section 209(a) of the Clean Air Act for the California Exhaust Emission Standards and Test Procedures for 1980 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, adopted November 22, 1976, amended June 22, 1977, last amended September 29, 1977; State of California, Air Resources Board, *Resolution 76-44*, November 23, 1976; State of California, Air Resources Board, *Resolution 77-5*, January 25, 1977; State of California, Air Resources Board, *Resolution No. 77-13-2*, June 22, 1977; Transcript of Public Hearing to Consider Amendments to Vehicle Emission Regulations in Light of New Federal Waiver Requirements, State of California, Air Resources Board, Public Hearing No. 77-20-2, Los Angeles, California, September 29-30, 1977, at 4, 10-13, 117-118, 125-128, 158-169, 184 (hereinafter "Tr. of CARB September 1977 Hearing"); Transcript of Meeting of State of California Air Resources Board, Sacramento, California, June 22, 1977, at 1, 4, 10-17, 94-96, 105-106 (hereinafter "Tr. of CARB June 1977 Meeting"); "Statement by American Motors Corporation in Response to the California Air Resources Board Proposed Changes in the Emissions Standards and Test Procedures for 1979 and Subsequent Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles," Presented at the CARB Hearing, November 23, 1976, at 7.

[11] Brief for California Air Resources Board at 16-17, In the Matter of Application of California Air Resources Board for a Waiver From the Provisions of Section 209(a) of the Clean Air Act for the California Exhaust Emission Standards and Test Procedures for 1980 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, adopted November 22, 1976, amended June 22, 1977, last amended September 29, 1977. In this connection American Motors Corporation stated that there is scientific evidence that a 3.4 and 9.0 CO standard are equivalent with respect to the protection of furture health. *See* Tr. of CARB September 1977 Hearing, *supra* note 10, at 68-69. General Motors Corporation also agreed that there was no need for a CO standard more stringent than 9.0 grams per vehicle mile. *See* "General Motors Statement to the California Air Resources Board on Proposed 1979 and Subsequent Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicle Emission Standards," Presented at the CARB Hearing, Los Angeles, California, November 23, 1976, at 2.

[12] *See* Tr. of October 1977 Hearing, *Supra* note 10, at 28, 46-47, 50-51, 234-239; Supplement to CARB September 1977 Staff Report, *supra* note 10, at 2; Letter from Thomas C. Austin, CARB, to Benjamin R. Jackson, Director, MSED, EPA, November 1, 1977. Ford Motor Company and General Motors also indicated that a 0.41 grams per vehicle mile total HC standard would result in a marginal difference in reactive HC control as compared to a 0.39 grams per vehicle mile non-methane HC standard. *See* Letter from D. A. Jensen, Ford Motor Company, to B. R. Jackson, Director, MSED, EPA, October 28, 1977; Tr. of October 1977 Hearing, *supra* note 10, at 200.

[13] *See* Tr. of October 1977 Hearing, *supra* note 10, at 16, 223-224.

[14] H.R. Rep. No. 95-294, 95th Cong., 1st sess. 302 (1977).

[15] *See* 41 FEDERAL REGISTER 44209, 44210 (October 7, 1976).

[16] *See* Transcript of Public Hearing on California Waiver Request (May 16-20, 1977), Volume III, at 391-397, 401, 408, 411-415 (hereinafter "Tr. of May 1977 Hearing"); Tr. of October 1977 Hearing, *supra* note 10, at 129. General Motors, Chrysler Corp. and American Motors Corp. shared Ford's concerns with the use of methylcyclopentadienyl manganese tricarbonyl (MMT). *See* Tr. of May 1977 Hearing at 445-447, 501; Letter from Michael W. Grice, Chrysler Corp., to Benjamin R. Jackson, Director, MSED, EPA, June 8, 1977.

[17] On July 7, 1977, the CARB adopted a prohibition against the addition of any manganese additives to fuels sold in California after September 8, 1977. *See* 13 Cal. Admin. Code § 2254 (1977). As a result, the CARB stated that MMT will not be required in the test fuel for the certification of 1979 and subsequent model year light-duty trucks and medium/duty vehicles. *See* 13 Cal. Admin. Code § 1960 (1976); Letter from G. C. Hass, CARB, to all Motor Vehicle Manufacturers, July 8, 1977.

er stated that it would be able to certify some vehicles to these standards in 1980.[18] General Motors also stated that its diesel-powered passenger cars could not meet a 1.0 gram per vehicle mile NO_x standard in combination with a 0.41 gram per vehicle mile HC standard.[19] Chrysler Corp. indicated that the requisite technology was currently available to meet emission levels of 0.41 total HC, 9.0 CO and 1.0 NO_x.[20] Although American Motors Corp. claimed that the 1980 NO_x standard was not technologically feasible within the available lead time and that it could not estimate at the present time the lead time required for the development of the requisite technology, it nevertheless stated that test results on the physical durability of three-way catalysts were satisfactory and that it might be able to certify one engine family to the California standards in 1980.[21] Volkswagen of America stated that it had undertaken a developmental program in order to sell gasoline-powered passenger cars in California in 1980, but had already concluded that it would not be able to sell diesel-powered cars in California if the NO_x standard was below 1.5 grams per vehicle mile.[22] Honda Motor Co. stated that it would offer three passenger car models for sale in California in 1980.[23] Mercedes-Benz claimed that its diesel-powered passenger car product line, with the exception of its very light vehicles with small diesel engines at low mileages, could not meet the 1980 1.0 NO_x standard.[24] Mercedes-Benz further claimed that its vehicles would show adverse performance effects and increased maintenance costs if these vehicles were required to certify to a 1.5 NO_x standard under the 100,000 mile optional certification procedure.[25] Nissan Motor Co. indicated that its 1980 passenger cars would be able to meet the applicable California standards.[26] Subaru of America stated that the requisite technology is currently available to meet a 1.0 NO_x passenger car standard with certain fuel economy, driveability and cost penalties.[27] Toyota Motor Co. suggested that the 1980 standards could be met through the use of an oxidation catalyst-exhaust gas recirculation emission control system with fuel economy and driveability penalties, or through the use of a three-way catalyst emission control system with a retail price increase of 350 dollars over 1977 California models.[28] Finally, the CARB testified that the requisite technology was currently available to meet these standards. In support of this conclusion, the CARB presented 1977 certification data provided by 16 manufacturers showing that 38 engine families had met the emission levels required under the 1980 standards.[29] The CARB also stated that there was adequate lead time to permit the development and application of three-way catalyst technology in the event that any manufacturer should decide to utilize this technology in order to meet these standards.[30]

With respect to the cost of compliance with the 1979-1980 standards, Honda expected a retail price increase of forty dollars for its 1980 model year vehicles as a result of these standards.[31] Mercedes-Benz estimated a fuel economy penalty ranging from 0.2 to 1.0 miles per gallon due to these standards.[32] General Motors estimated a zero to twenty percent fuel economy penalty and a 110 to 130 dollar retail price increase over 1977 Federal models associated with these standards.[33] Finally, the CARB testified that the 1980 standards would result in a retail price increase ranging from zero to 506 dollars over 1979 model year costs and a fuel economy benefit of approximately five percent.[34]

In light of the above discussion as well as the judgment of my technical staff,[35] giving appropriate consideration to the cost of compliance within such period, I cannot conclude that the appropriate technology cannot be developed and applied within the available lead time to permit manufacturers to meet California's 1979-1980 passenger cars standards.

As to the primary set of 1981 California standards and the optional set of 1981-1982 California standards, Ford contended that there was inadequate lead time available to meet a 0.41 total HC standard and that therefore the primary set of 1981 standards was not technologically feasible.[36] Ford claimed that the HC standard would present both higher certification risks and significant fuel economy penalties for both six and eight cylinder engine passenger cars.[37] However, in order to achieve compliance with this standard, Ford has initiated a program to reduce the amount of total hydrocarbons in the tailpipe emissions.[38] Although it presented data indicating that its small four cylinder engine vehicles could meet a 0.7 NO_x standard and stated that its larger engine vehicles could meet this stand-

[18] *See* Tr. of May 1977 Hearing, *supra* note 16, at 446-449, 455-456, 459-460, 462; Tr. of October 1977 Hearing, *supra* note 10, at 191.

[19] *See* Tr. of May 1977 Hearing, *supra* note 16, at 430.

[20] *See* Tr. of August 1977 Hearing, *supra* note 10, at 339, 347-348.

[21] *See* Tr. of May 1977 Hearing, *supra* note 16, at 499-500, 523-530; Letter from Stuart R. Perkins, American Motors Corp., to Benjamin R. Jackson, Director, MSED, EPA, December 22, 1977; Memorandum from Eric O. Stork, former Deputy Assistant Administrator for Mobile Source Air Pollution Control, EPA, to Norman Shutler, Deputy Assistant Administrator for Mobile Source and Noise Enforcement, EPA, October 31, 1977, at 7, 11. American Motors indicated, however, that a one engine family California product line was not viable from a marketing standpoint. *See* "Statement by American Motors Corp. in Response to the California Air Resources Board Proposed Changes in the Emissions Standards and Test Procedures for 1979 and Subsequent Passenger Car, Light-Duty Trucks and Medium-Duty Vehicles," Presented at the CARB Hearing, Los Angeles, Calif., November 23, 1976.

[22] *See* Letter from J. Kennebeck, Volkswagen of America, Inc., to Director, MSED, EPA, October 21, 1977.

[23] *See* Letter from Hideo Sugiura, Honda Motor Co., Ltd., to G. C. Hass, CARB, July 27, 1976.

[24] *See* Letter from Daimler-Benz Aktiengesellschaft to G. C. Hass, CARB, July 19, 1976, Letter from H. W. Gerth, Mercedes-Benz of North America, Inc., to Benjamin R. Jackson, August 22, 1977; von Manteuffel, Peter, Daimler-Benz A. G., "Statement Before the State of California Air Resources Board," Presented at the CARB Hearing, Los Angeles, Calif., November 23, 1976.

[25] *See* Letter from Daimler-Benz Aktiengesellschaft to G. C. Hass, *supra* note 24.

[26] *See* Letter from Motoo Harada, Nissan Motor Co., Ltd., to G. C. Hass, CARB, July 19, 1976.

[27] *See* "Statement by Subaru of America, Inc. to the California Air Resources Board," Presented at the CARB Hearing, Los Angeles, Calif., November 23, 1976.

[28] *See* "Toyota Comments on the Proposed Exhaust Emission Standards and Test Procedures for 1979 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles," Presented at the CARB Hearing, Los Angeles, Calif., November 23, 1976; Letter from Keitaro Nakajima, Toyota Motor Co., to G. C. Hass, CARB, October 18, 1976.

[29] *See* "Statement of the California Air Resources Board Before the U.S. Environmental Protection Agency Regarding California's Request for a Waiver of section 209(a) of the Clean Air Act In Order That California May Implement More Stringent Emission Standards and Test Procedures for 1978 and Later Model-Year Motorcycles, Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," Presented at the EPA California Waiver Hearing, San Francisco, Calif., May 18, 1977.

[30] *See* Tr. of May 1977 Hearing, *supra* note 16, at 3410342, 358-363; *State of California*, Air Resources Board, Resolution 76-44, November 23, 1976; CARB November Staff Report, *supra* note 10, at 21-26.

[31] *See supra* note 23.

[32] *See* Letter from Daimler-Benz Aktiengesellschaft to G. C. Hass, *supra* note 24.

[33] *See* Tr. of May 1977 Hearing, *supra* note 16, at 429, 451-452, 454.

[34] *See id.* at 342-343, 345-346. The CARB has provided data submitted by the manufacturers on this question. *See* CARB November Staff Report, *supra* note 10, at 11-20.

[35] *See* Memorandum from Eric O. Stork to Norman Shutler, *supra* note 21, at 8-12.

[36] *See* Tr. of October 1977 Hearing, *supra* note 10, at 70-71, 86, 120-129; Jensen, D. A., "Statement of D. A. Jensen, Director, Automotive Emissions and Fuel Economy Office, Ford Motor Co." Presented at the EPA California Waiver Hearing, San Francisco, Calif., October 13, 1977, at Attachment 1-7.

[37] *See* Letter from D. A. Jensen to B. R. Jackson, *supra* note 12.

[38] *See id.*

ard with a fifty percent confidence level, Ford testified that it did not know at the present time whether a 0.7 NO_x standard was technologically feasible.[39] Consequently, based on the available data, Ford recommended that I grant California a waiver for a 0.39 non-methane HC/7.0 CO/1.0 NO_x set of standards for the 1981 model year.[40]

Volkswagen testified that any NO_x standard for gasoline and diesel-powered engines below 1.0 and 1.5, respectively, was not technologically justified.[41] Volkswagen was confident, though, that its gasoline-powered vehicles could meet a 0.41 total HC/9.0 CO/1.0 NO_x set of standards by 1981,[42] but it had serious reservations with regard to the technological feasibility of the 100,000 mile optional certification procedure.[43]

Chrysler Corp. testified that it would comply with either set of 1981 California standards.[44]

General Motors indicated that its diesel-powered vehicles may not be able to meet either a 0.41 total HC standard or a 0.39 non-methane HC standard.[45] Nevertheless, it stated that it would not be able to offer some presently undetermined product line for sale in 1980.[46] General Motors further stated that its vehicles would have difficulty in meeting a NO_x standard below 1.0 grams per vehicle mile.[47]

The Automobile Importers of America (AIA) contended that the record did not support the finding that these standards were technologically feasible.[48]

Finally, the CARB indicated that the increase in the stringency of the CO standard over that originally adopted by the CARB should not create any lead time problems.[49] It further indicated that the primary set of standards for the 1981 model year were intended to be identical to the applicable Federal standards for that year.[50]

Concerning the cost of compliance with these standards, very little information was provided by the manufacturers at the hearing.

With respect to the 1982 primary set of standards as well as the 1983 and subsequent model year standards, General Motors stated that neither its gasoline nor diesel-powered vehicles could currently meet the 0.4 NO_x standard,[51] but that it would probably be able to certify gasoline-powered vehicles to this standard in 1982.[52] It also claimed that it was premature to consider the technological feasibility of the 100,000 mile optional certification procedure at the present time.[53]

Although Ford identified certain emission control systems which may have the future capability to meet a 0.4 NO_x standard, it testified that the requisite technology was not currently available to meet this standard and it could not determine at the present time when such level of NO_x control would be feasible.[54] As a result, it concluded that the 1982 standards were currently not technologically feasible.[55] Ford also testified that its vehicles could achieve the same emissions performance as the Volvo vehicle product line if its vehicles were equipped with fuel injection technology, but it believed that this could not be accomplished on its entire passenger car product line by 1982.[56] Consequently, Ford expressed concern that the enforcement of this standard may result in significant compromises in model availability, fuel economy and costs of compliance which might outweigh the potential beneficial effects on air quality associated with such a standard.[57] On the other hand, Ford indicated that it was presently undertaking a conventional engine and PROCO engine research program in order to develop viable technology for meeting a 0.41 total HC/3.4 CO/0.4 NO_x set of standards.[58] Ford further indicated that there would be no lead time problems with meeting a 0.4 NO_x standard if this research and development program proceeded successfully as scheduled.[59] Based on its ongoing research efforts, Ford recommended that I defer a decision on the waiver request for these standards for at least one year in order to permit it to evaluate the results of this program.[60] In addition, Ford submitted data on 20 research test cars which had met emission levels of 0.41 HC/3.4 CO/0.4 NO_x at low mileages and on two other test vehicles which had met emission levels of 0.41 HC/9.0 CO/0.4 NO_x also at low mileages.[61]

Chrysler testified that it could not certify production vehicles to a 0.4 NO_x standard at the present time in light of the Federal fuel economy requirements and the California assembly-line testing requirements. It also suggested that there may be an inadequate amount of lead time available to meet such a standard by 1982.[62] This conclusion was not affected by whether the applicable CO standard was 7.0 or 9.0 grams per vehicle mile.[63] Chrysler further indicated that its diesel-powered vehicles would not be able to meet any NO_x standard below 1.0 at the present time.[64] On the other hand, Chrysler testified that it was continuing its developmental efforts to achieve a 0.4 NO_x standard and presented test data from its advance emission control system developmental program showing emissions performance below 0.41 HC/3.4 CO/1.0 NO_x emission levels.[65]

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[39] *See* Tr. of October 1977 Hearing, *supra* note 10, at 72, 85, 88, 91, 94-100, 103-104.

[40] *See id.* at 73, 87-88, 134; Tr. of August 1977 Hearing, *supra* note 10, at 330-331.

[41] *See* Tr. of October 1977 Hearing, *supra note 10, at 158-160.*

[42] *See id.* at 161.

[43] *See id.* at 163-165.

[44] *See id.* at 214-215.

[45] *See* Letter from T. M. Fisher, General Motors Corp., to Benjamin R. Jackson, Director, MSED, EPA, June 17, 1977, at 61.

[46] *See* Tr. of October 1977 Hearing, *supra* note 10, at 193-194.

[47] *See id.* at 197.

[48] *See id.* at 216.

[49] *See id.* at 229.

[50] *See id.*

[51] *See* Tr. of August 1977 Hearing, *supra* note 10, at 368-369, 380, 386, 390, 392-393, 396.

[52] *See id.* at 382-383.

[53] *See id.* at 385, 395.

[54] *See id.* at 300, 302-304, 306, 313; Tr. of October 1977 Hearing, *supra* note 10, at 72-73, 131-132; Memorandum from John P. Eppel and Helen O. Petrauskas, Ford Motor Co., to B. R. Jackson, Presiding Officer, EPA, September 9, 1977, at 15-23; Jensen, D.A., "Statement of Donald A. Jensen, Director, Automotive Emissions and Fuel Economy Office," Presented at EPA California Waiver Hearing, San Francisco, Calif., August 4, 1977, at Attachment IV, V (hereinafter "Ford August 1977 Statement").

[55] *See* Tr. of August 1977 Hearing, *supra* note 10, at 313. However, Ford did point out that its statements on these standards should not be interpreted as an indication that it believed that these standards would not be attainable at some future date. *See id.* at 302.

[56] *See id.* at 326-327.

[57] *See id.* at 300, 307-308. Ford indicated, though, that PROCO engine vehicles experience 20 percent better fuel economy than those vehicles equipped with a conventional engine. *See id.* at 332. Data from the PROCO engine research program indicated that vehicles with such engines would suffer a five to ten percent fuel economy penalty in meeting a 0.4 NO_x standard over that in meeting a 1.0 NO_x standard. *See id.*

[58] *See* Ford August 1977 Statement, *supra* note 54, at Attachment IV, V.

[59] *See* Tr. of August 1977 Hearing, *supra* note 10, at 318, 322-329.

[60] *See id.* at 337.

[61] *See* Ford August 1977 Statement, *supra* note 54, at Attachment III; Letter from E. E. Weaver, Ford Motor Co., to Benjamin R. Jackson, Director, MSED, EPA, August 25, 1977. Ford also stated that its PROCO engine vehicles could meet a 0.4 NO_x standard at low mileages. *See* Tr. of August 1977 Hearing, *supra* note 10, at 331-332.

[62] *See* Tr. of August 1977 Hearing, *supra* note 10, at 341, 345-346, 348, 350, 352, 354-357, 360; Letter from R. M. Wagner, Chrysler Corp., to Benjamin R. Jackson, Director, MSED, EPA, August 25, 1977. For the reasons stated in a prior waiver decision, I cannot agree with the contention raised by Chrysler that an emission standard which is likely to result in civil penalties due to a violation of the Federal fuel economy standards is not technologically feasible as a matter of law. *See* 42 FEDERAL REGISTER 1829, 1831 (January 12, 1978).

[63] *See id.* at 346-347.

[64] *See id.* at 341; Letter from R. M. Wagner to Benjamin R. Jackson, *supra* note 62.

[65] *See* Tr. of August 1977 Hearing, *supra* note 10, at 348-349, 352; Letter from R. M. Wagner to Benjamin R. Jackson, *supra* note 62.

Other manufacturers also submitted comments on this question. American Motors Corp. stated that its vehicles would not be able to meet a 0.4 NO_x standard in 1982.[66] American Motors further stated that an additional period of lead time beyond that necessary for the development and application of the requisite technology would be required for low volume, vendor dependent manufacturers if such a NO_x standard were enforced in California.[67] Mercedes-Benz contended that a 0.4 NO_x standard was not technologically feasible within the time frame proposed by the CARB.[68] While Volkswagen stated that the technology was not currently available to meet a 0.4 NO_x standard, the CARB reported that Volkswagen has previously indicated that a 1982 0.4 NO_x standard was technologically feasible within the available lead time.[69] Although test data on a Toyota vehicle using three-way catalyst technology showed emission levels less than 0.4 NO_x at 31,000 miles, Toyota Motor Co. claimed that it still faced emission control system deterioration problems in meeting this standard, and as a result, it was doubtful that it could comply with such a standard by 1982.[70] Subaru of America stated that its vehicles could probably comply with a 0.4 NO_x standard in spite of the fact that such a standard would force the unwise and impractical use of catalyst technology on its vehicles.[71] Honda reported that its low NO_x CVCC system showed test results between 0.3 and 0.4 grams of NO_x per vehicle mile.[72] The Motor and Equipment Manufacturers Association (MEMA) contended that the CARB had not made the requisite findings with regard to the technical feasibility of the 100,000 mile optional certification procedure.[73]

Finally, the CARB testified that the vehicles of two different manufacturers have already met 0.4 NO_x emission levels during 1977 model year certification.[74] The CARB believed that the technology used by these manufacturers could be applied to the vehicles of other manufacturers to permit these vehicles to meet a 0.4 NO_x standard within the available lead time.[75] The CARB also stated that a 7.0 grams of CO per vehicle mile standard would pose no additional technical burdens on any manufacturer other than those already imposed by a 9.0 CO standard.[76] With respect to the standards under the optional 100,000 mile certification procedure, the CARB stated that this procedure was adopted in response to the manufacturers' concerns with the problem of emission controls on diesel-powered vehicles.[77] Although the CARB noted that all diesel-powered vehicles may not be able to certify to a 1.0 NO_x standard, it nevertheless concluded that the "* * * use of exhaust gas recirculation on diesel engines can provide sufficient control, even for large diesel-powered passenger cars, to achieve a 1.0 g/mi [grams per mile] NO_x standard."[78] As a result, the CARB concluded that the 1982 primary set of standards as well as the 1983 and subsequent model year standards were technologically feasible within the lead time remaining.[79] In support of its conclusion, the CARB reported that various manufacturers have indicated that a 0.4 NO_x standard was feasible at low mileages and submitted 1977 quality audit test data obtained from the assembly-line testing of Volvo and Saab vehicles and test data from the CARB Volvo test program.[80]

In light of the above discussion, as well as the judgment of my technical staff and the ongoing developmental efforts of the manufacturers,[81] I am unable to conclude that the requisite technology cannot be developed and applied within the available lead time in order to achieve compliance with the 1981 and subsequent model year California standards.

With respect to the cost of compliance with the 1981 and subsequent model year California standards, the CARB concluded that this cost would not be excessive.[82] Although both Ford and General Motors stated that there would be a fuel economy penalty associated with a 0.4 NO_x standard, Ford believed that it would still be able to meet the applicable Federal fuel economy requirements.[83] Chrysler stated that a 1.0 or 0.4 NO_x standard would result in adverse effects on fuel eoncomy, limitations in product availability, and increases in vehicle cost.[84] Chrysler further stated that "* * * the minimum fuel economy *penalty* in going from 1.5 HC, 15.0 CO and 2.0 NO_x to 0.4 HC, 3.4 CO and 0.4 NO_x is about 15 percent even if three-way catalyst techniques are used."[85] Very little specific information was provided by American Motors, although it indicated that its vehicles would suffer a fuel economy penalty under a 0.4 NO_x standard.[86] Subaru

[66] *See* "Statement by American Motors Corp. on the California Air Resources Board Proposal for 1982 and Later Passenger Car, Light-Duty Truck and Medium-Duty Vehicle NO_x Exhaust Emission Standards," Presented at the CARB Hearing, June 22, 1977; "Statements by American Motors Corp. in Response to the California Air Resources Board Proposed Changes in the Emissions Standards and Test Procedures for 1982 and Later Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles," Presented at the CARB Hearing, January 25, 1977; "Statement by American Motors Corp. in Response to the California Air Resources Board Proposed Changes in the Emissions Standards and Test Procedures for 1979 and Subsequent Passenger Car, Light-Duty Trucks and Medium-Duty Vehicles," Presented at the CARB Hearing, November 23, 1976.

[67] *See* Tr. of August 1977 Hearing, *supra* note 10, at 397-399, 402, 404-406.

[68] *See* Letter from H. W. Gerth to Benjamin R. Jackson, *supra* note 24.

[69] *See* Letter from J. Kennebeck, Volkswagen of America, Inc., to Director, MSED, EPA, October 21, 1977; CARB November Staff Report, *supra* note 10, at 20.

[70] *See* Letter from Keitaro Nakajima, Toyota Motor Co., Ltd., to G. C. Hass, CARB, October 18, 1976; Nakajima, Keitaro, "Toyota Comments Before the Environmental Protection Agency Waiver Hearing on the California Exhaust Emission Standard for 1982 and Subsequent Light and Medium-Duty Vehicles," August 4, 1977.

[71] *See* Tr. of August 1977 Hearing, *supra* note 10, at 407, 410, 415.

[72] *See Supra* note 22.

[73] *See* Tr. of August 1977 Hearing, *supra* note 10, at 279-280, 290.

[74] *See id.* at 265-266, 357; Letter from Thomas C. Austin to Ben Jackson, *supra* note 10.

[75] *See* Tr. of August 1977 Hearing, *supra* note 10, at 266, 270-274.

[76] *See id.* at 276-278.

[77] *See id.* at 266; Tr. of CARB June 1977 Meeting, *supra* note 10, at 5-6.

[78] State of California, Air Resources board, "Staff Report 77-13-2," June 22, 1977, at 9-10 (hereinafter "CARB June Staff Report").

[79] *See id.* at 5, 9-13; Tr. of August 1977 Hearing, *supra* note 10, at 266, 272-274; CARB November Staff Report, *supra* note 10, at 21-26; State of California, Air Resources Board, "Resolution 77-13-2", June 22, 1977; State of California, Air Resources Board, "Resolution 77-48," September 30, 1977; State of California, Air Resources Board, "Staff Report 76-18-2," September 21, 1976.

[80] *See* Tr. of August 1977 Hearing, *supra* note 10, at 266; Letter from Thomas C. Austin to Ben Jackson, *supra* note 10, at Attachments, V, IX, X.

[81] *See* Memorandum from Eric O. Stork to Norman D. Shutler, January 13, 1978, *supra* note 8; Memorandum from Eric O. Stork to Norman D. Shutler, April 4, 1978, *supra* note 8. Based on a certain set of assumptions, my technical staff has previously concluded that a 0.41 HC/3.4 CO/0.4 NO_x set of standards could be met as early as the 1982 model year. *See* Emission Control Technology Division, Mobile Source Air Pollution Control, Office of Air and Waste Management, EPA, "Automobile Emission Control—The Development Status, Trends, and Outlook as of December 1976," A Report to the Administrator, EPA, April 1977.

[82] *See* Tr. of August 1977 Hearing, *supra* note 10, at 275. The CARB also presented information provided by the manufacturers on this question. *See* CARB November Staff Report, *supra* note 10, at 10-20. I have also considered information relevant to this question in prior waiver decisions. *See* 43 FEDERAL REGISTER 1829, 1832 (January 12, 1978); 43 FEDERAL REGISTER 15490, 15492 (April 13, 1970).

[83] *See* Tr. of August 1977 Hearing, *supra* note 10, at 329-330, 388-389.

[84] *See id.* at 341. In this regard Chrysler indicated that the cost of equipping passenger cars with three-way catalyst emission control technology would be approximately 300 to 350 dollars per vehicle. *See id.* at 358-359.

[85] Letter from R. M. Wagner to Benjamin R. Jackson, *supra* note 62.

[86] *See* CARB November Staff Report, *supra* note 10, at 14.

stated that it would cost approximately three hundred dollars per vehicle, in addition to increased maintenance expenses, in order to equip passenger cars with a three-way catalyst emission control system.[87] MEMA stated that the competitive impact of the 100,000 mile optional certification procedure "* * * would be devastating, in that it would result in a substantial loss of business for automotive manufacturers, independent garages and other repair outlets."[88]

In spite of the concerns expressed by some of the manufacturers, I do not believe that the costs of compliance are so excessive as to warrant a denial of a waiver on these grounds, given the intent of Congress in adopting section 209 of the Act.[89]

Certification and Test Procedures. Under section 209(b), I also cannot grant a waiver if I find that the California certification and test procedures are in conflict with the corresponding Federal procedures. This situation may arise where: (1) A manufacturer elects the 100,000 mile optional certification procedure during the certification of 1981 and subsequent model year passenger cars and the demonstration of compliance with this procedure does not satisfy the applicable Federal requirements for this vehicle; or (2) two test vehicles representing the same engine family are required to go through Federal and California certification procedures in order to satisfy the Federal "line-crossing" requirements.[90] In the event that a manufacturer should elect the 100,000 mile optional certification procedure, I have decided that EPA will, pursuant to section 209(b)(3), accept the data used to successfully certify any vehicle under this procedure for Federal certification purposes. With respect to the second situation, I have decided that EPA will, pursuant to section 209(b)(3), accept the data used to successfully certify any vehicle under the California test procedures as demonstrating that such vehicle complies with the applicable Federal standards, and the appropriate Federal certificate of conformity will be issued on this basis. With respect to both of the foregoing points, the resulting Federal certificate of conformity issued on the basis of compliance with the corresponding California standards will cover only those vehicles introduced into commerce for sale in the State of California and possibly in States which have adopted California standards pursuant to section 177 of the Act. Whether the certificate would apply in those States, and under precisely what circumstances, are issues not before me now.

Objections to granting the waiver. For the reasons stated in a prior decision concerned with 1979 through 1982 model year light-duty trucks and medium-duty vehicles,[91] I must dismiss the objections raised concerning the applicable standard of review in a California waiver decision and the adequacy of the opportunity to comment on the 1980 0.39 grams per vehicle mile non-methane HC standard and the California high altitude regulations.[92] In that decision I have also addressed the manufacturers' request that I consider the impacts of a California waiver decision in light of section 177 of the Act.[93]

Ford objected to the granting of the waiver on the grounds that section 202 of the Act does not permit the regulation of methane emissions. Ford stated that the legislative history behind the Act clearly indicates that the intent of Congress was to control only detrimental HC emissions and not harmless exhaust constituents such as methane.[94] After careful consideration of this objection, I have determined that Ford's interpretation of the Clean Air Act is not correct.[95] Furthermore, it is EPA's practice to leave the decisions on controversial matters of public policy, such as whether to regulate methane emissions, to California.[96]

Ford argued that I should not grant California a waiver of Federal preemption unless I can make the findings required to support California's contention that a waiver should be granted.[97] However, as has been stated in prior waiver decisions, I have interpreted section 209 of the Act to impose on the manufacturers the burden of demonstrating that the conditions exist which warrant the denial of a waiver request.[98]

Ford and others claimed[99] that these standards may result in a restricted vehicle offering incapable of meeting basic market demand in California contrary to *International Harvester* v. *Ruckelshaus.*[100] I cannot agree. While the information presented on this issue does indicate that California's emission standards may limit the number of models of passenger cars which may be sold in California in the future, I cannot conclude on the basis of this record that any limitation will in fact occur or that any such limitation will cause basic market demand not to be satisfied.[101]

AIA contended that the CARB had not provided interested parties with a fair and adequate opportunity to comment on the 1981 and 1982 California standards at the CARB public hearing of September 29, 1977.[102] If this argument has any validity, the EPA waiver hearing is not the proper forum in which to raise it. Section 209(b) does not require that EPA insist on any particular procedures at the State level. Furthermore, a complete oppor-

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[87] *See* Tr. of August 1977 Hearing, *supra* note 10, at 407, 410, 419.

[88] *See id.* at 284.

[89] *See* Memorandum from Eric O. Stork to Norman D. Shutler, January 13, 1978, *supra* note 8, at 1, 2, 20–23; Memorandum from Eric O. Stork to Norman D. Shutler, April 4, 1978, *supra* note 8, at 18–22.

[90] *See* 40 CFR § 86.077–28 (1975). The term "line-crossing," as defined by the Federal procedures, refers to the situation where the durability vehicle interpolated 4,000 or 50,000 mile points on the least-squares fit straight line drawn through the test data points exceed the Federal exhaust emission standards. This situation does not include the case where no applicable durability vehicle test data point exceeded the applicable standard. The California "line-crossing" requirements may be found in subparagraph 3(c) of the "California Exhaust Emission Standards and Test Procedures for 1980 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," as amended September 30, 1977.

[91] *See* 43 FEDERAL REGISTER 1829, 1833 (January 12, 1978).

[92] *See* 43 FEDERAL REGISTER 1829, 1832, 1833, 1834 (January 12, 1978); *see also* letter from Stuart R. Perkins to Benjamin R. Jackson, *supra* note 21.

[93] *See* 43 FEDERAL REGISTER 1829, 1833 (January 12, 1978).

[94] *See* Tr. of October 1977 Hearing, *supra* note 10, at 69, 76–85, 129–130; Ford Motor Co., "Non-Methane Hydrocarbon Motor Vehicle Standards Under the Clean Air Act Amendments of 1977," Presented at the EPA California Waiver Hearing, San Francisco, Calif., October 13, 1977.

[95] The EPA has previously indicated that compliance with the statutory requirements of section 202(b) of the Act would be based on a total HC standard. *See* 42 FEDERAL REGISTER 32906 (June 28, 1977); Letter from David G. Hawkins, Assistant Administrator for Air and Waste Management, EPA, to Herbert Misch, Ford Motor Co., November 17, 1977. Although Ford contends that the Clean Air Act Amendments of 1977 require otherwise, I continue to believe that the express language of section 202(b) of the Act permits the regulation of methane emissions. The legislative history behind the Clean Air Act contains no statement to the contrary.

[96] *See* 41 FEDERAL REGISTER 44209, 44210 (October 7, 1976); 42 FEDERAL REGISTER 31641 (June 22, 1977).

[97] *See* Memorandum from John P. Eppel and Helen O. Petrauskas to B. R. Jackson, *supra* note 6.

[98] *See* 41 FEDERAL REGISTER 44209 (October 7, 1976); 42 FEDERAL REGISTER 25755, 25756 (May 19, 1977).

[99] *See* Tr. of August 197 Hearing, *supra* note 10, at 300, 308, 341, 343–344, 352–354; Tr. of October 1977 Hearing, *supra* note 10, at 75, 159; Letter from Michael W. Grice, Chrysler Corp., to Benjamin R. Jackson, Director, MSED, EPA, October 28, 1977.

[100] 478 F.2d 615 (D.C. Cir. 1973).

[101] *See supra* notes 16–81. I am not deciding here that the "basic demand" test of *International Harvester* is applicable in the context of a California waiver. Any determination in this matter would be guided by the interpretation of the applicability of *International Harvester* in a California waiver situation as set forth in a previous waiver decision. *See* 41 FEDERAL REGISTER 44209, 44212, 44213 (October 7, 1976).

[102] *See* Tr. of October 197 Hearing, *supra* note 10, at 216.

tunity was provided at the EPA waiver hearing for the presentation of views.

Subaru of America contended that the adoption and enforcement of an optional 100,000 mile certification procedure violated the consistency requirement of section 209.[103] Subaru took the position that since section 202(a) states that emission standards "shall be applicable to * * * vehicles and engines for their useful life (as determined under subsection (d))," then in order to be consistent with section 202(a) any certification procedure required by California must be related to a vehicle's "useful life." However, inasmuch as this certification procedure is merely optional, and any manufacturer may, if it chooses, comply with the 50,000 mile California certification procedure, I cannot deny this waiver request on this ground.

In any event, the concept of a 100,000 mile certification procedure is not in violation of the requirement of consistency. Congress has intended that the question of being "consistent with section 202(a)" only relate to whether the standards are technologically feasible within the available lead time, given appropriate consideration to the cost of compliance within this time frame, or whether the California certification and test procedures are in conflict with the applicable Federal procedures.[104] Inasmuch as the problems of conflicting procedures have been resolved above, it it therefore in the framework of technology and lead time that California's use of a 100,000 mile certification procedure has entered into the question of consistency, especially in analyzing durability data supplied by the manufacturers and in determining the lead time requirements for distance accumulation during certification. The questions of technology and lead time as they relate to this certification procedure have been previously discussed.

American Motors contended that the 1981 and 1982 model year California standards must be consistent with section 202(b) of the Act and that therefore the CARB must seek an additional waiver of the 1981 and subsequent model year Federal standards for light-duty vehicles produced by low volume manufacturers who are dependent on other manufacturers for technology development.[105] However, given the legislative history of the Clean Air Act Amendments of 1977, I do not concur with this interpretation of section 209 and the responsibilities of the State of California thereunder as suggested by American Motors. In enacting these Amendments, I believe Congress intended that all passenger cars would be required to meet any standard set by California and waived by me under section 209 of the Act.[106] Furthermore, the legislative history of the Clean Air Act Amendments of 1977 contains no statement imposing such an additional burden on the State of California as American Motors contends. In fact, these Amendments specifically reaffirm the original intent of Congress behind section 209 "* * * to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare." [107] As a result, I believe that it would be inconsistent with the intent of Congress in enacting section 209 to impose such a burden on California.[108]

Finally, various manufacturers questioned the need for these standards and the wisdom of California's emission control strategy. These arguments, however, are not grounds for denying California a waiver. Such arguments all fall within the EPA practice of leaving the decision on controversial matters of public policy to California's judgment.[109]

III. Finding and Decision

Having given due consideration to the record of the public hearings of May 16-19, August 3-4, and October 13, 1977, all material submitted for this record and other relevant information, I find that I am unable to make the determinations required for a denial of the waiver under section 209(b) of the Act, and therefore, I hereby waive application of section 209(a) of the Act to the State of California with respect to the following sections of title 13 of the California Administrative Code:

Section 1959.5, adopted on June 8, 1977, as amended June 22, 1977, and "California Exhaust Emission Standards and Test Procedures for 1979 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," adopted on June 8, 1977, with respect to 1979 model year passenger cars,

Sections 1960 (a) and (b), adopted November 23, 1976, as amended September 30, 1977, and "California Exhaust Emission Standards and Test Procedures for 1980 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," adopted on November 23, 1976, as amended September 30, 1977, with respect to 1980 and subsequent model year passenger cars, and

Sections 2100 *et seq.*, adopted June 24, 1976, as amended June 30, 1977, and "California New Motor Vehicle Compliance Test Procedures," adopted June 24, 1976, last amended June 30, 1977, with respect to 1979 model year gasoline-powered and 1980 and subsequent model year gasoline and diesel-powered passenger cars.

As stated above, this decision does not include (i) the California certification requirements covering the carburetor idle air/fuel mixture adjustment mechanism and (ii) the limitations on allowable maintenance incorporated by reference in section 1960 of title 13 of the California Administrative Code under the "California Exhaust Emission Standards and Test Procedures for 1980 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles."

In addition, I find that those actions of an administrative nature taken by the CARB with regard to the 1978 passenger car standards and test procedures fall within the scope of a waiver currently in effect, and therefore, do not require a new waiver.

My decision to grant the waiver will affect not only persons in California but also the manufacturers located outside the State who must comply with California's standards in order to produce passenger vehicles for sale in California. For this reason I hereby determine and find that this decision is of nationwide scope and effect.

A copy of the above standards and procedures, as well as the record of these hearings and those documents used in arriving at this decision, is available for public inspection during

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[103] *See* Tr. of August 1977 Hearing, *supra* note 10, at 409.

[104] *See* H.R. Rep. No. 95-294, 95th Cong., 1st sess. 301-302 (1977); *see also* 41 Federal Register 44209, 44212 (October 7, 1976); S. Rep. No. 403, 90th Cong., 1st sess. 33-34 (1967); "Hearings on S. 780 Before the Subcommittee on Air and Water Pollution of the Senate Committee on Public Works," 90th Cong., 1st sess. pt. 3, at 1765 (1967); 116 Cong. Rec. 30950, 30968 (1976). Even if this were not the case, I am not persuaded that I must deny California a waiver unless the State adopts the same period of applicability of the standard as the Federal period. Allowing California to adopt a longer period of applicability than the Federal period is fully in keeping with the Congressional intent behind section 209. *See* 41 Federal Register 44209, 44212 (October 7, 1976). Therefore, for the reasons given in addressing a similar question in a prior waiver decision concerned with motorcycle emission standards, I also consider this issue to be relevant to my determination of the stringency of the California standard or to my review of California's determination as to whether its standards, in the aggregate, are at least as protective of the public health and welfare as the applicable Federal standards. *See id.*

[105] *See* Letter from Stuart R. Perkins to Benjamin R. Jackson, *supra* note 21.

[106] *See* S. Rep. No. 95-127, 95th Cong., 1st sess. 71 (1977).

[107] H.R. Rep. No. 95-294, 95th Cong., 1st sess. 301-302 (1977).

[108] *See id.* at 71, 301-302; H.R. Rep. No. 95-564, 95th Cong., 1st sess. 170 (1977); 41 Federal Register 44209, 44210 (October 7, 1976).

[109] *See* Tr. of August 1977 Hearing, *supra* note 10, at 299-302, 334-336, 338, 345, 365-367, 369, 371-372, 374, 376-379, 381, 409, 411-414; Memorandum from John P. Eppel and Helen O. Petrauskas to B. R. Jackson, *supra* note 54, at 8-11; Letter from Stuart R. Perkins to Benjamin R. Jackson, *supra* note 21; 43 Federal Register 1829, 1833 (January 12, 1978).

normal working hours (8 a.m. to 4:30 p.m.) at the U.S. Environmental Protection Agency, Public Information Reference Unit, Room 292 (EPA Library), 401 M Street SW., Washington, D.C. 20460. Copies of the standards and test procedures are also available upon request from the California Air Resources Board, 1102 Q Street, Sacramento, Calif. 95812.

Dated: June 7, 1978.

BARBARA BLUM,
Acting Administrator.

[FR Doc. 78-16492 Filed 6-13-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

TV BROADCAST APPLICATIONS READY AND AVAILABLE FOR PROCESSING PURSUANT TO SECTION 1.573(d) OF THE COMMISSION'S RULES

Adopted: June 7, 1978.

Released: June 8, 1978.

By the Chief, Broadcast Bureau.

Notice is hereby given, pursuant to section 1.573(d) of the Commission's rules, that the television broadcast applications listed below will be considered to be ready and available for processing on July 24, 1978. Since the listed applications are mutually exclusive and have been cut off, no other application which involves a conflict with these applications may be filed. Rather, the purpose of this notice is to establish a date by which the parties to the forthcoming comparative hearing may compute the deadlines for filing amendments as a matter of right under section 1.522(a)(2) of the rules and pleadings to specify issues pursuant to section 1.584.

BPCT-5002 (new), Lima, Ohio, Associated Christian Broadcasters, Inc., Channel 44.
BPCT-5046 (new), Lima, Ohio, Strang Telecasting, Inc., Channel 44.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-16424 Filed 6-13-78; 8:45 am]

[6712-01]

COMMON CARRIER SERVICES INFORMATION

Publishing Cost

JUNE 8, 1978.

Due to the high cost of publishing notices listing Common Carrier applications accepted for filing with the Commission, they will, as of July 1, 1978, no longer be published in the FEDERAL REGISTER. This information is available in various industrial publications and as part of FCC news releases.

Questions concerning this revision may be directed to George Combs, FCC Rules Section, at 632-7024.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-16423 Filed 6-13-78; 8:45 am]

[6712-01]

[Docket No. 20546; FCC 78-372]

ITT WORLD COMMUNICATIONS, INC. AND WESTERN UNION INTERNATIONAL, INC.

Instituting Investigation

MEMORANDUM OPINION AND ORDER

Adopted: May 31, 1978.

Released: June 7, 1978.

By the Commission: Commissioners Ferris, Chairman; and Brown absent.

In the matter of ITT World Communications, Inc. Revisions to Tariff F.C.C. No. 43, Docket No. 20546; ITT World Communications, Inc. Revisions to Tariff F.C.C. No. 43, Transmittal No. 2081; Western Union International, Inc. Revisions to Tariff F.C.C. No. 4, Transmittal No. 1238.

1. By Memorandum Opinions and Orders, FCC 78-37, released January 27, 1978, and FCC 78-112, released February 27, 1978, the Commission suspended the proposed rate reductions of Western Union International, Inc. (WUI), and RCA Global Communications, Inc. (Globcom) for alternate voice/data (AVD) channel service between Hawaii and U.S. mainland. Now before the Commission for its consideration are (a) ITT World Communications Inc. (Worldcom) transmittal No. 2081 which contains a proposed rate reduction matching the WUI and Globcom suspended rates and a proposed reduction in the Hawaii-Guam rate; (b) WUI transmittal No. 1238 which contains a proposed rate reduction from the current rate for AVD circuits but which is higher than the suspended rate; (c) Petitions to reject these proposed reductions, filed by Hawaiian Telephone Co. (HTC); and (d) Opposition filed by Worldcom and WUI.

BACKGROUND

2. In an order released September 15, 1977, Western Union International, Inc., 66 FCC 2d 373 (1977), we determined that an investigation was warranted into the rate reduction for AVD circuits from $3,770 to $2,965 per month then proposed by WUI. In a subsequent order released October 4, 1977, ITT World Communications, Inc., 66 FCC 2d 330 (1977), we announced our intention to investigate Worldcom's proposed reduction from $3,770 to $2,944 per month for the same service. By Memorandum Opinion and Order, FCC 77-749, released November 2, 1977, we announced that the investigation would also include Globcom's proposed reduction from $3,770 to $2,920 per month for this service. We further stated in this last order that should the other carriers propose to match Globcom's proposed rate that the investigation would relate to the $2,920 rate rather than the higher rates then in effect. None of these reductions was suspended.

3. In those orders we noted that the cost support material supplied by the carriers raised substantial questions in the areas of entrance facility costs,[1] fill factors, impact on other services and projected rates of return. Our analysis of those submissions indicated that the proposed rates in the $2,900 range may cover the carriers' estimated operational expenses and, therefore, we did not suspend those reductions. However, we noted that the reasonableness of the rates was, at best, speculative.

4. In our two suspension orders, supra, pertaining to WUI's and Globcom's proposed further reductions (to $2,735 for WUI and $2,720 for Globcom), the carriers' cost support was found deficient since the cost support material reflected earlier contract rates for entrance facilities as opposed to the higher tariff rates then in effect. Moreover, the proposed rates were less than the carriers' own estimated revenue requirement. Thus, the question of cross-subsidy was clearly raised. Also, the reasonableness of the rate was even more in question since the rate of return on the service appeared to be less than cost of capital. No explanations were offered concerning how the deficiencies would be handled and the proposed reductions were suspended for the maximum statutory period.

PRESENT PROPOSALS AND CONTENTION OF THE PARTIES

A. WUI

5. WUI now proposes a rate of $2,830 per month to be effective on May 22, 1978.[2] (Its suspended $2,735 rate becomes effective on June 20, 1978 following the suspension period.) WUI estimates its revenue requirement for the service at $2,811 per month, an increase over the estimated revenue requirement for the $2,735 rate. WUI's support material indicates that the new rate proposal recognizes increased

[1] "Entrance facilities" are the facilities the international record carriers obtain between their operating units and cable heads or earth stations. These facilities are generally obtained from the telephone company.

[2] By order of the Chief, Common Carrier Bureau requiring full statutory notice, WUI has deferred the effective date of this revision to June 8, 1978